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COMMONWEALTH OF VIRGINIA

STATE CORPORATION COMMISSION

AT RICHMOND, JULY 6, 2001

COMMONWEALTH OF VIRGINIA, ex rel.

STATE CORPORATION COMMISSION

v.

CASE NO. PUE000470

COLUMBIA GAS OF VIRGINIA, INC.,

Defendant

FINAL ORDER

The sole issue presented by this case and properly before this Commission is whether Columbia Gas of Virginia, Inc.'s ("Columbia Gas" or "the Company") practice of using a temperature compensation factor to calculate the gas consumption of its low-pressure residential customers is permitted by its filed tariff.

As summarized in the Hearing Examiner's Report in this matter,¹ on August 2, 2000, the Company notified the Commission's Division of Energy Regulation (the "Staff") that the Company had begun that day adjusting residential customer billings with a Gas Temperature Compensation Factor. As explained at the hearing in this matter by Staff Witness Cody Walker, such adjustments are designed to compensate for changes in gas density corresponding to ambient air temperature at customers' gas meters. As explained by Mr. Walker and the Company's witness, Robert Horner, mechanical gas meters incrementally over-measure gas at temperatures above 60 degrees and incrementally under-measure them at temperatures below

¹ Commonwealth of Virginia, ex. rel., State Corporation Commission v. Columbia Gas of Virginia, Inc., Case No. PUE000470, Report of Michael D. Thomas, Hearing Examiner, dated April 25, 2001.

60 degrees.² Temperature compensation can be accomplished automatically through technologically advanced, temperature compensating meters currently provided to some, but not all, of the Company's residential customers. In this case, the Company sought to approximate the operation of temperature compensating meters in the measurement of gas consumption by customers with nontemperature compensating meters through the use of tables and formulas.

On August 3, 2000, the Staff notified the Company by letter that its review of the Company's filed tariff revealed no provision authorizing the calculation and imposition of a temperature compensation factor on low-pressure residential customers. The Staff requested the Company to discontinue the practice until the Company could demonstrate that it had authority in its filed tariff to apply such a factor.

By letter dated August 9, 2000, the Company responded that its review of its tariff confirmed that nothing in its tariff precluded the application of a temperature compensation factor to the accounts of its residential customers.

On August 23, 2000, the Staff filed a Motion Requesting Issuance of a Rule to Show Cause. The Staff requested that the Commission, pursuant to its authority under § 56-35 of the Code of Virginia, issue a Rule to Show Cause against the Company for it to show cause, if any, why it should not be held in violation of §§ 56-234, 56-236 and 56-237 of the Code of Virginia for failing to comply with its filed tariffs, and why, because of the Company's failure to cease

² According to Mr. Walker, gas meters are typically calibrated to a standard temperature of 60 degrees. Since the actual density of gas flowing through such meters will expand or contract depending on ambient air temperatures, when the temperature of the flowing gas fluctuates incrementally above or below 60 degrees the meter may inaccurately record the amount of gas flowing through the meter. The Company has a formula, which it uses in conjunction with a table (called the Appalachian Table), to determine the temperature compensation adjustment it will make. The Appalachian Table is a table of unspecified origin that lists monthly average flowing gas temperatures for the Appalachian area. If the flowing gas temperature, as per the Appalachian Table, is less than 60 degrees the adjustment would be greater than one, and if the flowing gas temperature is more than 60 degrees the adjustment would be less than one. The customer's monthly gas consumption, as shown by the meter, is multiplied by the temperature compensation factor to arrive at the customer's ultimate consumption for which he is billed. (Tr. at 18-21)

such violations, the Commission should not impose fines and penalties pursuant to § 12.1-13 of the Code of Virginia and enjoin the Company from further violations of §§ 56-234, 56-236 and 56-237 of the Code of Virginia. The Staff further requested the issuance of a temporary injunction against the Company, upon notice and hearing, enjoining the Company from further engaging in the foregoing conduct pending the Commission's final determination in this matter. In support of its motion, the Staff argued that the Company's applicable tariff made no provision for the application of a temperature compensation factor to residential customers' bills.

The Commission issued the requested Rule to Show Cause (the "Rule") on August 25, 2000. The matter was assigned to Hearing Examiner Michael D. Thomas to determine whether the requested temporary injunction should be issued. In addition, the Commission scheduled a hearing for September 11, 2000, for the Company to show cause why it should not be enjoined from further violations of §§ 56-234, 56-236 and 56-237 of the Code of Virginia, and penalized pursuant to § 12.1-13 of the Code of Virginia. The Company was directed to file a responsive pleading to the Rule on or before September 5, 2000.

The Company filed its Response to the Rule on September 5, 2000. The Company denied that it failed to follow its tariff or was in violation of §§ 56-234, 56-236 and 56-237 of the Code of Virginia. The Company further stated that it had voluntarily terminated the imposition of the temperature compensation factor in question on August 29, 2000, pending resolution of this matter, but it reserved the right to recommence the practice in the absence of a Commission resolution of this matter.

On September 8, 2000, the Staff filed a Reply and a Motion Requesting Cancellation of Hearing. In the Motion, the Staff joined with the Company in requesting that the September 11, 2000, hearing be cancelled inasmuch as the Company had ceased the challenged practice,

pendente lite (while concurrently reserving its right to advocate such practice relative to the ultimate disposition of this case). The request was granted by Commission Order dated September 8, 2000.

By Hearing Examiner's Ruling entered on November 20, 2000, this matter was set for hearing on February 15, 2001, and a procedural schedule was established for the filing of prefiled testimony and evidence with the Commission.

The hearing was convened as scheduled. Arlen K. Bolstad, Esquire, appeared on behalf of the Staff. Kodwo Ghartey-Tagoe, Esquire, and James S. Copenhaver, Esquire, appeared on behalf of the Company. The Staff presented the testimony of Cody D. Walker, Assistant Director of the Division of Energy Regulation who adopted his pre-filed direct and rebuttal testimonies at the hearing. The Company presented the testimony of Robert E. Horner, Regulatory Policy Manager for Columbia Gas of Virginia, Inc., who also adopted his pre-filed testimony at the hearing. At the conclusion of the hearing, the parties were afforded an opportunity to file post-hearing briefs. The Company and the Staff filed post-hearing briefs on March 22, 2001. Thereafter the Hearing Examiner's report on this matter was filed on April 25, 2001. The Company, by its counsel, filed comments and exceptions to the Report on May 16, 2001.

Hearing Examiner Thomas found in his report that the Company's tariff does not permit the imposition of a temperature compensation factor on its low-pressure residential or commercial customers. Consequently, the Company's imposition of such a factor on its low-pressure residential customers constitutes a violation of §§ 56-236 and 56-237 of the Code of Virginia. Specifically, the Hearing Examiner found that the Company violated § 56-236 of the Code of Virginia by failing to file with the Commission as part of its rate schedules copies of all

rules and regulations that in any manner affect the rates charged or to be charged by the Company. He also found that the Company violated § 56-237 of the Code of Virginia by failing to provide thirty days' notice to the Commission of a change in its rates, tolls, charges, rules or regulations.³

Incidental to the above findings, Mr. Thomas noted that during the Company's most recent rate case, the Staff adjusted the Company's billing determinants to reflect the application of a temperature compensation factor to low-pressure *commercial* customers. The Commission subsequently approved the Company's total revenue requirement, which was based in part on these billing determinants. However, the Hearing Examiner emphasized, after the Commission issued its final order in the case, the Company failed to amend its tariff to reflect the Company's authority to make temperature compensation adjustments to low-pressure commercial customer accounts. Consequently, Mr. Thomas concluded that inasmuch as the tariff establishes the contractual relationship between the Company and its customers for the provision of gas service, the Company has had no legal basis in its tariff for applying a temperature compensation factor to its low-pressure commercial customers. As the Hearing Examiner noted:

[A]lthough the Company and the Staff may have reached an agreement concerning the application of a temperature compensation factor to low-pressure commercial customers, which the Commission approved, unless and until the Company amends its tariff, the Company's low-pressure commercial customers are not contractually obligated to pay the additional gas charges that result from the application of the temperature compensation factor.⁴

³ Hearing Examiner Thomas did, however, determine that there was insufficient evidence to support a finding that the Company violated § 56-234 of the Code of Virginia by failing to provide reasonably adequate service and facilities at reasonable and just rates.

⁴ Report of Michael D. Thomas, Hearing Examiner, dated April 25, 2001, pg. 10.

We note, however, that Mr. Thomas's findings are silent on the question of Company refunds in the case of such low-pressure commercial customers.

Mr. Thomas also found that although from August 2, 2000 through August 29, 2000, the Company included a temperature factor on its low-pressure residential customers' gas bills, none of the residential customers suffered any harm therefrom. As manifest in the record, the imposition of the temperature compensation factor during August 2000 resulted in a bill credit for the Company's customers (presumably because flowing gas temperatures during that period were above 60 degrees).⁵ However, the record shows from the testimony of Mr. Walker (Tr. 22-30) and the cross examination of Mr. Horner (Tr. At 60-62), that had the Company continued to apply the factor, the Company would have netted approximately \$800,000 annually in non-gas revenue not authorized under the revenue requirement established in the Company's 1998 rate case. It was also undisputed that any such overearnings (if so determined to be, by this Commission) could not be refunded to these residential customers since the company's rates were not then (nor are they currently) subject to refund.

In summary, the Hearing Examiner recommended that this Commission: (i) adopt the findings and recommendations contained in his Report; (ii) direct the Company to amend its tariff within thirty days of the final order in this case clarifying that the Company may impose a temperature compensation factor on its low-pressure commercial customers; (iii) enjoin the Company from future conduct that constitutes a violation of §§ 56-236 and 56-237 of the Code of Virginia; and (iv) pass the papers herein to the file for ended causes.

NOW THE COMMISSION, having considered the record, the Hearing Examiner's Report, the comments and exceptions to the Hearing Examiner's Report, and the applicable law,

⁵ Id. at 10.

is of the opinion and finds that we should adopt the findings and recommendations set forth in the Hearing Examiner's Report except as otherwise provided below.

The Company's tariff, Second Revised Sheet No. 359, § 2.2(a), provides, in language applicable to both low-pressure residential and commercial customers, as follows:

Low Pressure Accounts

The Quantity of Gas Determined by Meter Reading

Except as otherwise indicated in an applicable schedule, the quantity of gas delivered to each Customer shall be ascertained by the readings of the meter furnished by the Company. The Company will read the meter once each month. As to any Customer whose meter is unable to be read in a month, the consumption for the month shall be determined by calculation on the basis of the Customer's previous usage considering factors such as variations in weather, number of days in the period, the trend in seasonal usage, etc., in order to provide as nearly accurate a bill as possible without actually reading the meter.

Ex. CW-1, Attachment 2.

As noted by the Hearing Examiner, the positions of the parties are fairly straightforward. The Company argues that nothing in the Company's tariff precludes its application of a temperature compensation factor to its residential customers' accounts; that it does not seek to change its tariff; that it is applying its tariff as it was filed; and that, since the Company's last rate case when the Commission addressed temperature compensation for low-pressure commercial customers covered by the same tariff provision, it has consistently applied its tariff.

The Company argues that while the language of its tariff does not explicitly mention the application of a temperature compensation factor, it is broad enough to allow the Company's use of such a factor. Significantly, the Company asserts that if the language of the tariff is broad enough to permit the application of a temperature compensation factor to low-pressure commercial customers, then it supports the application of a temperature compensation factor to

low-pressure residential customers.⁶ Finally, the Company contends that, in using a temperature compensation factor, it is merely trying to "ascertain" the actual quantity of gas delivered to each of its residential customers. (Columbia's Post-Hearing Brief at 6-10).

The Staff, on the other hand, argues that the Company's tariff is a model of clarity; that the tariff makes no provision for the application of a temperature compensation factor to low-pressure residential customers; that following the Company's interpretation of the tariff would allow a gas company to add any charge to a customer's bill as long as the charge was tied to an actual gas meter reading; and that the additional \$800,000 in annual non-gas revenues produced by the temperature compensation factor constitutes an unauthorized rate increase for the Company. (Staff's Post-Hearing Brief at 7-11).

We agree with the Hearing Examiner's assessment that the plain and unambiguous language of the tariff does not permit the Company to adjust its low-pressure residential customers' gas bills with a temperature compensation factor.⁷ As the Hearing Examiner stated:

[T]he tariff states: "the quantity of gas delivered to each customer shall be ascertained by the readings of the meter furnished by the Company." The clear import of this language is that the customer is responsible for paying for the quantity of gas delivered by the Company as shown by his gas meter reading. Nowhere does it state in the tariff that a temperature compensation factor shall be applied to the gas meter reading. The application of a temperature compensation factor produces a different result for gas consumption than what is actually recorded on the customer's meter. The plain language of the tariff does not support the further adjustment of the customer's gas meter reading for billing purposes.⁸

⁶ Comments and Exceptions of Columbia Gas of Virginia, Inc., dated May 16, 2001, pg. 5.

⁷ Report of Michael D. Thomas, Hearing Examiner, dated April 25, 2001, pg. 10.

⁸ Id. at 10.

Moreover, and as the Hearing Examiner pointedly emphasized, it is the tariff that establishes the basis of contractual relationships between regulated companies such as Columbia Gas and their customers. Consequently, the tariff reading as it does, the Company had no legal basis for applying temperature compensation to low-pressure residential accounts.

We specifically reject the Company's view and assertion that it may apply temperature compensation factors to its low-pressure residential accounts because no language in the tariff precludes or prohibits it. The Company has cited no legal authority for this proposition either in its post-hearing brief or in its comments and exceptions filed on May 16, 2001. Moreover, such a contention is firmly contradicted by the letter and spirit of §§ 56-236 and 56-237 declaring the policy of this Commonwealth that regulated utilities' rates, terms and conditions of service must be expressed in their tariffs.

Inasmuch as we have made clear in this Order our construction of the language in the Company's tariff and its application to the Company's customers, we will not enjoin the Company from future application of a temperature compensation factor to low-pressure residential customers under the current tariff language. In so saying, we express our confidence in the Company's commitment to comply with the spirit and letter of this Order, thereby making such an injunction unnecessary.

Finally, we conclude that the issue of applying a temperature compensation factor to the Company's low-pressure *commercial* customers is not before us in this proceeding. This issue was neither the subject of any complaint in this proceeding, nor otherwise put at issue herein. Accordingly, we reach no decision with respect thereto.

Accordingly, IT IS ORDERED THAT:

(1) The recommendations set forth in the Hearing Examiner's April 25, 2001 report are hereby adopted as they relate to low-pressure residential customers except with respect to his recommendation that the Company be enjoined from future conduct that constitutes a violation of §§ 56-236 and 56-237 of the Code of Virginia.

(2) The issue of the application of a temperature compensation factor to the Company's low-pressure commercial customers was not before the Commission.

(3) The papers herein are passed to the file for ended causes.